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DAVE CORTESE AND COUNTRY CLUB VILLA
APARTMENTS

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ERIK ESTAVILLO,

Plaintiff,

V.

SENATOR DAVE CORTESE, COUNTRY
CLUB VILLA APARTMENTS

Defendants.

Case No. C2:304032-VKD

**NOTICE OF MOTION AND MOTION
TO DISMISS PLAINTIFF'S
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

Date: November 28, 2023

Time: 10:00 a.m.

Courtroom: 2, 5th Floor

Judge: Magistrate Virginia K. Demarchi

TO PLAINTIFF ERIK ESTAVILLO:

PLEASE TAKE NOTICE that on November 28, 2023 at 10:00 a.m. in the United States District Court, Northern District of California, the courtroom of the Honorable Virginia K. DeMarchi, located in Courtroom 2, 5th Floor, 280 South First Street, San Jose, CA 95113, Defendants DAVE CORTESE AND COUNTRY CLUB VILLA APARTMETNS (“Defendants”) will and hereby do move to dismiss the action filed by Plaintiff Erik Estavillo (“Plaintiff”) pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6).

This Motion is brought on the grounds that Plaintiff already has a pending lawsuit, alleging the very same claims as alleged in the instant action, against the very same Defendants. This Motion is also brought on the grounds that the allegations in the Complaint do not allege

1 sufficient facts to allege subject matter jurisdiction before this Court. The Motion will be based
 2 on this Notice, the Memorandum of Points and Authorities, the Request for Judicial Notice, the
 3 record on file in this action, and any such evidence and argument as may be presented at the
 4 hearing on this Motion.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I.**

7 **INTRODUCTION**

8 Defendants move to dismiss the instant complaint on the grounds that Plaintiff already has
 9 an action pending in Santa Clara County Superior Court alleging the very same claims. The
 10 action pending in Santa Clara County was filed two months prior to filing the instant action. Not
 11 only is Plaintiff alleging the same facts, but the Complaint filed in this Court is identical to the
 12 Complaint filed in the Superior Court.

13 **II.**

14 **STATEMENT OF ISSUES TO BE DECIDED**

15 In accordance with Local Rule 7-4, Defendants submit the following issues for the Court
 16 to decide:

- 17 1) Should the Court dismiss Plaintiff's Complaint on the grounds that Plaintiff
 18 already has a pending lawsuit, filed two months prior to the filing of the instant
 19 action, in Santa Clara County Superior Court.
- 20 2) Should the Court dismiss Plaintiff's Complaint on the grounds that this Court does
 21 not have subject matter jurisdiction over the claims alleged in the Complaint.

22 **III.**

23 **STATEMENT OF PERTINENT FACTS**

24 The Complaint in this action specifically alleges that the lawsuit "arises under the laws of
 25 California. (RJA, ¶1). The Complaint further alleges that "venue is appropriate in the Downtown
 26 Superior Court" and further alleges "it is under California State Statute/Law that one or more of
 27 the claims arises against the defendants are based." (RJA, ¶2).

1 With respect to the alleged claims, Plaintiff alleges that he is permanently disabled and
2 has been a resident at Country Club Villa Apartments for 20 years. [Complaint, ¶4.] He further
3 alleges that he purchased a new vehicle and attempted to obtain a parking permit to park his new
4 vehicle. [Complaint, ¶7.] He then alleges he was informed that households were limited to two
5 vehicles at a time and that he was further informed he would have to park his new vehicle outside
6 of the property, across the street or in the visitors section. [Complaint, ¶8.] According to the
7 Complaint, he then started parking in the visitors section, but since there are limited parking
8 spaces in that section, he parked at the Bank of America around the corner. [Complaint, ¶9.] He
9 then alleges that the security supervisor of Country Club Villa Apartments began to ticket his
10 vehicle for not leaving the premises by 8:30 a.m., despite the fact that his vehicle had a handicap
11 placard. He alleges that other vehicles were not treated in the same manner. [Complaint, ¶10.]

IV.

LEGAL ARGUMENTS

A. THE COURT SHOULD DISMISS THE INSTANT COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION AND IMPROPER VENUE GIVEN THAT PLAINTIFF ALREADY HAS ANOTHER ACTION PENDING IN STATE CALIFORNIA STATE COURT BASED ON THE SAME IDENTICAL FACTS AND CLAIMS.

18 Federal courts prevent litigants from pursuing two separate lawsuits asserting claims
19 arising out of the same set of operative facts. Woodards v. Chipotle Mexican Grill, 2015 WL
20 3447438, at * 11 (D. Minn.) (“rule against claim-splitting prevents a party from pursuing two
21 distinct lawsuits that assert claims arising out of the same set of operative facts”); Feeamster v.
22 Gaco W., LLC, No. 18-CV-01327-HSG, 2018 WL 4219199, at *1 (N.D. Cal. Sept. 5, 2018). The
23 purpose of this rule barring claim-splitting serves to protect the party from being harassed by
24 repetitive actions based on the same claim, and promotes judicial economy and convenience.
25 Bojorquez v. Abercrombie & Fitch, Co., 193 F. Supp. 3d 1117, 1123 (C.D. Cal. 2016). The claim
26 splitting doctrine does not require a final decision in the first action. Rivera v. Am. Fed'n of
27 State, Cty., & Mun. Employees, AFL-CIO, Loc. 444, 2017 WL 3021038, at *3 (N.D. Cal. July

1 17, 2017). Suits are duplicative if the claims, parties, and available relief do not significantly
2 differ between the two actions. Id.

3 In the instant action, the State Action Complaint not only alleges similar facts, but it is
4 also identical to the Complaint in this action. Accordingly, this Court must dismiss the
5 Complaint in this action to prevent Plaintiff from further harassing Defendants. The claims
6 subject to this Complaint are already being litigated in State Court. There is no dispute that the
7 claims are identical. As such, this action must be dismissed.

8 **V.**

9 **CONCLUSION**

10 For the reasons stated above, this Court should dismiss this case with prejudice given that
11 Plaintiff already has a pending case, which is being litigated in State Court.

12 Dated: October 12, 2023

SPENCER FANE LLP

13
14 By: 
15 Servando Sandoval

16 Attorneys for Defendants
17 DAVE CORTESE AND COUNTRY CLUB
18 VILLA APARTMENTS

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